

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Rules and Regulations Implementing the)	
Telephone Consumer Protection Act of 1991)	GC Docket No. 02-278
)	
Petition of YouMail, Inc. For Expedited)	
Declaratory Ruling That YouMail's Service)	
Does Not Violate the TCPA)	

REPLY COMMENTS OF YOUMAIL, INC.

YOUMAIL, INC.

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Its Attorneys in this Matter

Dated: August 9, 2013

Summary

The YouMail Petition has received a wide array of supporting comments demonstrating the urgent need for the Commission to grant the Petition and provide a common sense clarification that there is no violation of the Telephone Consumer Protection Act when subscribers to the YouMail virtual receptionist service send the very same one-time, individual-to-individual text reply to people who *first* initiate calls to them that the YouMail user could send on his or her own via any cellular phone.

The few opposing commenters ask the FCC to interpret the TCPA's definition of ATDS to sweep the YouMail system into it, by adding the word "future" to "capacity" and reading "random or sequential" out of it. But, in using the present tense of the verb "has," the definition of ATDS is unambiguous and refers to equipment that currently "has the capacity to store or produce telephone numbers using a random or sequential number generator; and to dial those numbers." Thus, it is the opposing commenters and not YouMail that seek to change the definition of ATDS. By confirming that ATDS refers to automated telephone dialing systems with the current capacity to randomly or sequentially generate or store telephone numbers and dial those numbers, the FCC correctly calibrates the definition to target the kinds of robocalling systems it was intended for, while avoiding a nonsensical application of the definition that would sweep in any computer, smart phone, or other device that could be programmed to meet the definition even though it currently bears no resemblance to an ATDS and is not used for that purpose.

Similarly, the FCC should establish that YouMail auto-receipts (since they are sent in response to an in-bound call from the user of a cellular telephone) are sent with the requisite prior consent, since they do no more than the individual cell phone user could do on their own.

Indeed, the most popular phone on the market now requires its users to decide whether to reply to an in-bound call by return call or return text. Recognizing the manner in which today's phones work is necessary to thwart plaintiffs' unfair efforts to create strict liability under the TCPA for virtually all telephone users. Like the Commission's recent *SoundBite* decision, a common sense clarification on this issue would eliminate great uncertainty in the marketplace, avoid a bizarre environment creating strict liability for most phone users, and pose no threat to consumers' privacy. Anyone receiving a call on his or her cell phone can text back a response. Liability should not change if they do so using the YouMail virtual receptionist.

Finally, the Commission should recognize that YouMail is simply an intermediary for individuals' communications and hold that it is exempt from liability under the TCPA. As described in the Petition, YouMail's system does not "make" calls, it simply provides a tool to transmit messages on the user's behalf to the calling party.

Absent swift action from the Commission to announce a common sense declaratory ruling as outlined herein, innovators like YouMail will continue to be targeted by opportunistic class action TCPA lawsuits, which continue to skyrocket and are crippling small businesses and chilling investment in entrepreneurial enterprises. The pendulum must swing back toward common sense.

Table of Contents

	<u>Page</u>
Summary	i
Table of Contents	iii
REPLY COMMENTS OF YOUMAIL, INC.	1
YouMail’s System Is Not An ATDS	2
Callers Consent to Receive YouMail Users’ Reply Texts.....	6
YouMail is Not Telemarketing	9
YouMail Does Not “Make” a “Call” Under the TCPA	11
Conclusion	13

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REPLY COMMENTS OF YOUMAIL, INC.

YouMail, Inc., (“YouMail”), by its attorneys, respectfully submits these reply comments supporting its Petition for Expedited Declaratory Ruling¹ in the above-captioned proceeding. The Petition and support received from a broad spectrum of commenters establish a strong record urging the Commission to grant the Petition and provide a common sense clarification that there is no violation of the Telephone Consumer Protection Act (“TCPA”)² in sending a one-time, individual-to-individual text reply to people who *first* initiate calls to a YouMail user. The Petition has received support from industry groups as diverse as the financial services industry, technology innovators, consumer services companies, and others, all of whom recognize that YouMail’s virtual receptionist program is consumer friendly,³ does not constitute

¹ *YouMail, Inc.*, Petition for Expedited Declaratory Ruling, CG Docket No. 02-278 (filed April 19, 2013) (“Petition”).

² Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991) *codified at* 47 U.S.C. § 227.

³ *See Comments of Nicor Energy Services Company*, CG Docket 02-278 (filed July 25, 2013) (“Nicor Comments”) at p. 3.

an automatic telephone dialing system (“ATDS”), and is otherwise not prohibited by the TCPA.⁴ The Petition is not opposed by any consumer group, and the only commenters recommending denial of the Petition are the plaintiff (through her litigation attorneys) in one of the opportunistic class action lawsuits filed against YouMail (who have obvious personal incentives at stake), and three individual commentators who regularly submit comments on TCPA matters before the Commission. The majority of commenters further recognize that, without clarification from the Commission on at least the definition of ATDS, the class action climate surrounding the TCPA will continue its meteoric rise. This, in turn, will deprive consumers of useful features and chill the kind of innovation represented by YouMail and the supporting commenters.

YouMail’s System Is Not An ATDS

One fundamental issue presented by the Petition is a requested finding that YouMail’s auto-receipt texts are not sent via an Automatic Telephone Dialing System.⁵ This issue receives widespread support from the majority of commenters. As discussed in the Petition and articulated in numerous supporting comments, whether YouMail messages are sent via an ATDS centers on the statutory definition of ATDS. YouMail and supporting commenters submit the definition is unambiguous and refers to equipment that *currently* “has the capacity to store or produce telephone numbers using a random or sequential number generator; and to dial those numbers.”⁶ This interpretation is supported by a plain reading of the statute which uses the

⁴ Indeed, even Robert Biggerstaff, a regular opponent to declaratory relief petitions regarding the TCPA, while not wholly supportive of the Petition, concedes that YouMail’s practices should not give rise to liability under the TCPA. *See Comments of Robert Biggerstaff on the Petition of YouMail*, CG Docket No. 02-278 (filed July 25, 2013) at p. 5.

⁵ 47 U.S.C. § 227(a)(1); 47 C.F.R. § 64.1200(f)(2).

⁶ *Id.*

present tense of the verb “has.”⁷ Thus, it is important to understand that the relief requested by YouMail seeks no change in the definition of ATDS.

Nonetheless, a strong statement from the Commission is needed because various lawsuits against YouMail and other similar companies seek to contort the term “capacity” well beyond any reasonable statutory interpretation.⁸ In particular, among the “creative” arguments advanced to justify class action lawsuits, these attorneys argue that any general-purpose computing device that could run some other application or program in the *future* to store or produce telephone numbers using a random or sequential number generator is an ATDS.⁹ This interpretation of “future capacity” as “capacity” for the purpose of an ATDS would render any smart phone, desktop computer, laptop computer, iPad or other tablet, or even various general-purpose VOIP telephone systems into an “ATDS.” In turn, that would render any person liable under the TCPA who uses a smart phone to call any cell phone (even by dialing a wrong number). This is clearly inconsistent with the statutory language, the Commission’s precedent, and any common sense interpretation of “capacity.” The Commission must act to quash this expansive and insupportable interpretation of “capacity” and consequently of ATDS.¹⁰ This is surely not what Congress remotely intended when passing the TCPA.¹¹

Moreover, the proposed interpretation reads out of existence the portion of the definition of ATDS that reads “using a random or sequential number generator,” which clearly is central to

⁷ *Id.*

⁸ As commenter Communication Innovators, a coalition of technology companies, notes, more than 500 TCPA lawsuits have been filed in just the first 7 months of 2013, more than double from the previous year. *See Comments of Communication Innovators*, CG Docket No. 02-278 (filed July 25, 2013) at p. 5. (“CI Comments”).

⁹ Commenter Megan Gold is the plaintiff in one of these lawsuits.

¹⁰ *See* CI Comments at p. 5.

¹¹ *See* Nicor Comments at p. 4 (citing H.R. Rep. No 102-317 at 11 (1991) (describing abusive telemarketing practices); S. Rep. No. 102-178 at n. 5 (1991) (same)).

Congress' intent in enacting the legislation. When the term ATDS is interpreted so broadly as to encompass the telephone on most workplace desks that allows the user to store a few frequently called numbers for rapid dialing, then it does not matter whether the user uses the speed dial function or not. Merely placing a call to a cell phone via a phone that can store numbers and then automatically dial the same would be a violation. Yet, the Commission has specifically said "the prohibitions of § 227(b)(1) clearly do not apply to functions like 'speed dialing,' 'call forwarding,' or public telephone delayed message services (PTDMS), because the numbers called are not generated in a random or sequential fashion."¹²

The potential for such overly broad interpretations of ATDS (and the lack of any clear direction from the FCC regarding "capacity") is stifling innovation in the market for new mobile applications. This market is one where U.S. companies are leading innovators. Companies like YouMail are creating consumer-friendly applications. It would be antithetical to Congress' intent if these useful applications, developed in the United States by homegrown companies, could not be used because of a rigid (or overly expansive) interpretation of the TCPA.

One commenter suggests that confirming that the definition of ATDS means equipment with the *current* capacity to store or produce telephone numbers using a random or sequential number generator would result in "most if not all equipment used to make automated calls" becoming exempt from the TCPA.¹³ In fact, the exact opposite is true. Confirming that ATDS refers to automated telephone dialing systems with the current capacity to randomly or sequentially generate or store telephone numbers and dial those numbers not only underscores

¹² *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 7 FCC Rcd 8752 (1992) ("1992 Order") at ¶ 47.

¹³ *Comments of Joe Shields on the Petition for Expedited Declaratory Ruling of YouMail, Inc.*, CG Docket No. 02-278 (filed July 25, 2013).

the plain language of the statutory definition, but it correctly calibrates the definition to target the kinds of robocalling systems it was intended for, while avoiding a nonsensical application of the definition that would sweep in any computer, smart phone, or other device that *could* be programmed to meet the definition even though it currently bears no resemblance to an ATDS and is not used for that purpose. A common sense order like the one issued by the Commission in its *SoundBite* decision¹⁴ is equally necessary here to provide certainty to a presently unstable business environment.

Lastly, it is important to bring into focus that the issue before the Commission is narrow: Whether *YouMail's* system is an ATDS. It is not. As set forth in the Petition and *ex parte* materials submitted by YouMail, YouMail's technology does not have the capacity to store or produce numbers using a random or sequential number generator.¹⁵ YouMail's system sends a single text message to a single caller a single time in an *immediate* response to that caller trying to communicate with a specific YouMail user. *It does not use lists or databases of numbers.* The *only* way YouMail's system would fit under the definition of ATDS would be via a complete re-programming of the YouMail system—no different than the complete reprogramming of any computer, smart phone or electronic device with memory and the capability to place a call or send a text. As discussed above, and in many of the Petition's supporting comments, such an interpretation and application of the ATDS definition would serve no consumer purpose, stretch statutory interpretation to the extreme, and defy common sense. Moreover, the Commission has previously ruled that functions similar to those provided by

¹⁴ 27 FCC Rcd 15391 (2012).

¹⁵ See CI Comments at p. 4, defining "capacity" as "ability."

YouMail “where numbers are not generated in a random or sequential fashion” are not an ATDS.¹⁶

Callers Consent to Receive YouMail Users’ Reply Texts

A similar effort is afoot to stretch the concept of the TCPA’s term “prior express consent,” to the point of strangling nearly all two-way communication. An order in favor of the Petition on this issue would benefit both consumers and businesses.

No texts from YouMail users are sent unless the calling party chooses to communicate with the YouMail user in the first place. As the Petition and supporting commenters submit, when considering Congress’ intent when enacting the TCPA,¹⁷ the Commission’s previous rulings regarding consent,¹⁸ the totality of the circumstances regarding the callers’ expectations, and the current social norms regarding telephone interactions, the most reasonable outcome is that callers to YouMail users who receive an auto-receipt consented to that single immediate return communication and benefit from it.¹⁹

From the beginning of the TCPA, Congress’ intent has been clear: a party that has provided its telephone number in normal business communications has in essence requested the returned contact.²⁰ That Congressional intent must now be viewed in today’s world. As set forth in the Petition and GroupMe²¹ and other supporting comments, courts interpreting this issue have concluded that the prior express consent requirement is satisfied when the return

¹⁶ 1992 Order at ¶ 47.

¹⁷ House Report, 102-317, 1st Sess., 102 Cong. (1991) at p. 13.

¹⁸ 1992 Order at ¶31 (citing *id.*).

¹⁹ In addition, recipients of those text messages can also opt out of ever receiving another text from any YouMail customer by simply replying “stop”.

²⁰ 1992 Order at ¶31 (citing House Report, 102-317, 1st Sess., 102 Cong. (1991) at p. 13).

²¹ *GroupMe, Inc.’s Comments*, CG Docket No. 02-278 (filed July 25, 2013).

communication is made in a situation “where an individual voluntarily divulges her telephone number.”²² As noted above, a YouMail auto-receipt is *only* sent after someone calls a YouMail user first. Thus, the YouMail system is only facilitating one-to-one communications between a specific caller and the recipient the caller is trying to reach. Even in the absence of the YouMail system, the called party (the YouMail user) can *always* send a reply text to someone who has used a cell phone to call them. The calling party, in choosing to use a cell phone that can receive texts, sets in motion the chain of events that leads to their receipt of a text message. Under today’s norms, anyone who uses a cell phone to call another party knowingly subjects himself or herself to the called party’s ability to text or call them back, in response to that call.²³ This is evident from a basic understanding of modern cell phones, which have call logs for all incoming calls and, for each call log entry, offer the user the ability to text or call back with one press of a button.²⁴ Therefore, their use of a cell phone has to be seen as consent to the use of this feature. YouMail’s auto-receipts do nothing more than provide a one-time response, something that the call recipient could do on his or her own and therefore must be seen as falling within the scope of the consent inherent in the use of today’s telephones.

Moreover, this norm is not unique to cell phone users. Landline users are aware that parties they call likely will have caller ID or can use a call return feature (like *69) if they do not have Caller ID. Telephone users today understand that their call, if they choose not to block

²² *Id.* at pp. 3-4 (citing *Pinkard v. Wal-Mart Stores, Inc.*, 2012 WL 55511039 (N.D. Ala. Nov. 9, 2012) and *Emanuel v. Los Angeles Lakers, Inc.*, 2013 WL 1719035 (C.D. Cal. Apr. 18, 2013)).

²³ Moreover, the “real world” described in opposing commenter Mr. Roylance’s comments has not existed for decades, as evidenced by his reference to “while-you-were-out” pads and the assumed gender of his hypothetical receptionist. *See Gerald Roylance’s Comments on YouMail’s Petition*, CG Docket No. 02-278 (filed July 25, 2013) at p. 4.

²⁴ *See* Exhibit A, attached hereto, showing screen shots of cell phone call logs and return call options. Of particular interest, the Samsung Galaxy return call screen devotes equal space to the ‘call’ and ‘text’ icons.

their identity, can be returned, whether they leave a message or not. Further, in the YouMail context, the auto-receipt is a consumer courtesy no different than an out-of-office reply message, confirming receipt of the caller's initial communication. YouMail data shows users and their calling partners overwhelming like this feature. Therefore, there should be no fear that by merely recognizing the reality of today's telephones, the Commission will be opening consumers up to a flood of unsolicited text messages. The YouMail system simply does not work that way.

As noted above, adopting the broad definition of ATDS proffered by opposing commenters and Plaintiffs' class action attorneys, along with their proffered rigid definition of consent, would allow plaintiffs to argue that anyone who has called them or texted them, except in an emergency, is strictly liable to them under the TCPA. This should concern every user of a modern telephone. Must every smart phone user have prior express consent before calling or texting his or her colleagues, friends, and family members to avoid potential TCPA liability? Or must we all return to using rotary dial telephones to escape liability? If a small business owner who uses an iPhone cannot call back a customer who has initiated a call to him or her without being subject to class action lawsuits, then we have far exceeded the Congressional intent of the TCPA,²⁵ and imposed a significant burden on the conduct of any business in this country, regardless of industry.²⁶ Clarification from the Commission that YouMail auto-receipts are sent with the requisite consent is a necessary counterbalance to prevent this potential environment of

²⁵ House Report, 102-317, 1st Sess., 102 Cong. (1991) at p. 13.

²⁶ For the same reasons, it is unreasonable to suggest, as some of the opposing commenters do, that a "press one" message could be delivered during the inbound call to a YouMail user to acquire consent to a return call or text. Under these parameters, every common carrier would have to interject such a message for every single call made using a cell phone (again, an ATDS under opposing commenters' proffered scenario). Thus, if one receives a call from his mother and wants to return that call with a cell phone, he couldn't unless she first "pressed one" to consent to a return. The absurdity of this "solution" is self-evident.

strict liability for virtually all telephone users.²⁷ YouMail's service enables its users to customize their communications in a manner that allows parties calling them to receive immediate unique information about the called party.²⁸ YouMail's service is a one-to-one communication, initiated by the recipient of the auto-receipt; it is not a large scale marketing campaign using robocallers. Like the Commission's decision in *SoundBite*, a common sense clarification on this issue would eliminate great uncertainty in the marketplace, avoid a bizarre environment creating strict liability for most phone users, and pose no threat to consumers' privacy.

YouMail is Not Telemarketing

Presently, the TCPA and the Commission's regulations do not distinguish between telemarketing calls and non-telemarketing calls to cellular phones.²⁹ A party is liable under the TCPA if it calls a cellular phone using an ATDS without prior express consent, regardless of the purpose of the call (emergency calls excluded).³⁰ Thus, the nature of the YouMail auto-receipt is not actually before the Commission, so Commenter Gold's lengthy colloquy alleging that YouMail's auto-receipts are really telemarketing messages serves no purpose other than to attempt to tarnish YouMail to gain a perceived advantage in Ms. Gold's class action litigation against YouMail. Nonetheless, it is important for YouMail to explain why the messages are not telemarketing to correct the record and because, beginning October 16, 2013, the Commission's

²⁷ See Nicor Comments at pp. 7-8 (discussing interplay between ATDS and consent.)

²⁸ See *GroupMe Petition* at p. 7.

²⁹ 47 U.S.C. § 227(b)(1); 47 C.F.R. § 64.1200(a)(1)(iii).

³⁰ *Id.*

revised regulations will take effect which will create a heightened “prior express *written* consent” standard for *telemarketing* calls only.³¹

Gold’s motives are revealed quickly by the fact that she has included as Exhibit A to her comments the auto-receipt message received by individuals who elect to receive notifications via *email*. That is, these are messages that are displayed on a desktop computer. Her Exhibit A does ***not*** reflect the very different auto-receipt sent via text and displayed on a mobile device. Mobile users receive a different display, which is first shown in YouMail’s *ex parte* presentation to Commission staff.³²

The YouMail auto-receipt is entirely informational for the recipient. It contains the telephone number (and usually name as it appears from the inbound call) of both the YouMail user who was called and the inbound caller, allowing that inbound caller to verify he or she called the intended person. If the YouMail user chooses, the auto-receipt can also contain a picture of the YouMail user who was dialed, providing further information and confirmation to the auto-receipt recipient. The auto-receipt can also contain the customized response created by the YouMail user (“I’m under the sink and will call you back in 30 minutes”). Lastly, it can contain a link that, upon election by the recipient, takes them to an extended information page where they have the option to hear the voicemail they just left, provide additional information about the purpose of their call, edit information about their name (i.e. change “unknown” to actual name to ensure return call), or forever opt out of receiving text messages from YouMail users. This feature allows the auto-receipt recipient to replay the voicemail, permitting further confirmation that he or she was understandable and imparted all desired information. It renders

³¹ 77 Fed. Reg. 63,240 (Oct. 16, 2012) (to be codified at 47 C.F.R. pt. 64)

³² *YouMail Notice of Ex Parte Presentation*, GC Docket No. 02-278 (filed June 13, 2013) at pp. 9-10.

the auto-receipt a true “receipt,” providing proof that a voicemail was left and its details. Importantly, it is on this optional second page—not the original text message auto-receipt—which contains additional *information* (still not advertising) about YouMail (also subject to YouMail user control—they know and decide what is valuable to the recipient) so that the recipient knows to which website it has traveled and to prevent spoofing.

Ms. Gold cites the conversion rate of recipients of the auto-receipt into new YouMail users as evidence that YouMail is using its auto-receipts for telemarketing purposes. The fact that recipients of the auto-receipt sign up for YouMail simply proves it is a smart, consumer-friendly, sought-after service (indeed, it is overwhelmingly popular among YouMail users and auto-receipt recipients alike). It does not ascribe a telemarketing purpose to the informational auto-receipt (or even the subsequent informational page).

YouMail Does Not “Make” a “Call” Under the TCPA

The final issue before the Commission raised in the Petition is whether YouMail is the “person” making the “call,” the fundamental element for liability under the TCPA.³³ The commenters addressing this issue in the most persuasive manner are CallFire Inc.³⁴ and Robert Biggerstaff,³⁵ strange bedfellows indeed. Both agree that YouMail “appears to be principally executing directives on behalf of their customer, similar to a common carrier.”³⁶ Mr. Biggerstaff goes on to note that YouMail’s role appears more akin to a conduit, which would “militate against liability” under the TCPA.³⁷

³³ 47 U.S.C. § 227 (b)(1)(A).

³⁴ *Comments of CallFire, Inc.*, GC Docket No. 02-278 (filed July 25, 2013)(“CallFire Comments”).

³⁵ Biggerstaff Comments, *supra*.

³⁶ *Id.*, at p. 4 (emphasis in original).

³⁷ *Id.*, at p. 5.

The Commission has previously addressed this issue in a manner consistent with YouMail’s Petition, holding intermediaries of someone else’s communication exempt from liability.”³⁸ Here, as described in the Petition, YouMail’s system provides a tool capable of applying logic decisions upon request from a YouMail user to send an auto-receipt in order to confirm the recipient can receive an auto-receipt and to send it on the YouMail subscriber’s behalf.³⁹ In this regard, as Mr. Biggerstaff suggests, YouMail is similar to a common carrier. Not surprisingly, Mr. Biggerstaff is not entirely supportive of YouMail on this issue, and urges the Commission to use caution against the “creeping levels of involvement by conduits like YouMail.”⁴⁰ Yet, the services YouMail provides do not make it any more liable under the TCPA than a common carrier. The statute holds liable those persons that “make” an illegal call. Like a common carrier, YouMail does not control what number is “called,” or when auto-receipts are sent. Those functions are determined by the inbound call and the YouMail user’s settings, who can turn off the feature entirely. Just like the call recording feature on a VoIP system might be available to all users, it is the customer that has ultimate control over the feature and must use it with the understanding that it must comply with call recording laws.

Some of the individual commenters point to the Commission’s recent DISH Network declaratory ruling as guidance on this issue.⁴¹ In DISH Network, the Commission determined that a third party seller does not “initiate” calls made through a third party telemarketer under the TCPA, but may be held vicariously liable on common law principles of agency for violations by

³⁸ See CallFire Comments at p. 5 (quoting *In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 7 F.C.C.R. 8752, 8780).

³⁹ YouMail Petition at p. 13.

⁴⁰ Biggerstaff Comments at p. 6.

⁴¹ See, e.g. Biggerstaff Comments (citing the Joint Petition Filed by DISH Network, LLC, FCC 13-54 (April 17, 2013) (Declaratory Ruling)).

the third parties.⁴² DISH Network is not instructive in this case because YouMail cannot be analogized to either a seller or a telemarketer. In the DISH Network situation, EchoStar and DISH had enlisted telemarketing “retailers” and “dealers” who were violating the TCPA while telemarketing as “agents” for DISH and EchoStar.⁴³ Here, as Mr. Biggerstaff correctly observes, it is ultimately the YouMail user who is responsible for the existence and content of the message.⁴⁴ Mr. Biggerstaff further correctly observes that a person “initiates” a telegram by dictating it to a Western Union clerk—not by tapping out Morse code on the key.⁴⁵ Where Mr. Biggerstaff errs is by suggesting that this interpretation runs counter to the DISH Network Order. It does not run counter; the DISH Network ruling simply does not apply because YouMail is not like *either* the seller or the telemarketer in the DISH Network case. It is exempt entirely as the common carrier intermediary. Just like telephone companies offer feature-rich services that allow their users to enhance their calling abilities (including automatically dialing return calls like *69), and ultimately connect the call when the user selects those features, the common carrier does not become liable under the TCPA. The same must be true for YouMail.

Conclusion

The great weight of commentary in the record supports YouMail’s arguments that its individual-to-individual, one-time immediate auto-receipts are not prohibited by the TCPA, and are overwhelmingly appreciated and sought after by those who receive them. Confirmation from the Commission that YouMail’s system does not constitute an ATDS, that recipients of the auto-receipts consent to receive them, and that YouMail does not “make” or “initiate” calls under

⁴² The Joint Petition Filed by DISH Network, LLC, FCC 13-54 (April 17, 2013) (Declaratory Ruling)

⁴³ DISH Network Ruling at ¶ 6, 9.

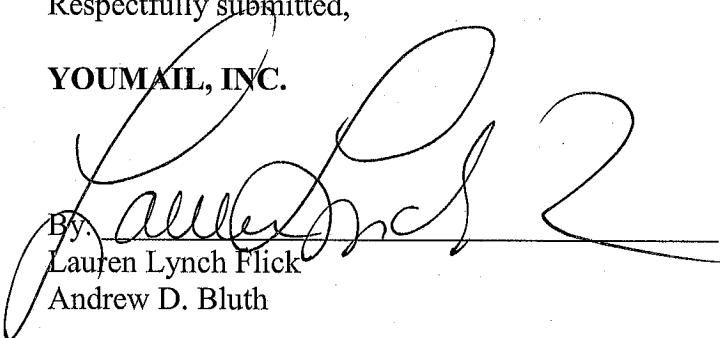
⁴⁴ Biggerstaff Comments at p. 4.

⁴⁵ *Id.*

the TCPA is necessary to provide clarity in the marketplace and permit continued innovation, particularly for mobile applications. Accordingly, YouMail respectfully requests that the Commission grant its request for an expedited declaratory ruling as set forth in its Petition.

Respectfully submitted,

YOUMAIL, INC.


By: Lauren Lynch Flick
Andrew D. Bluth

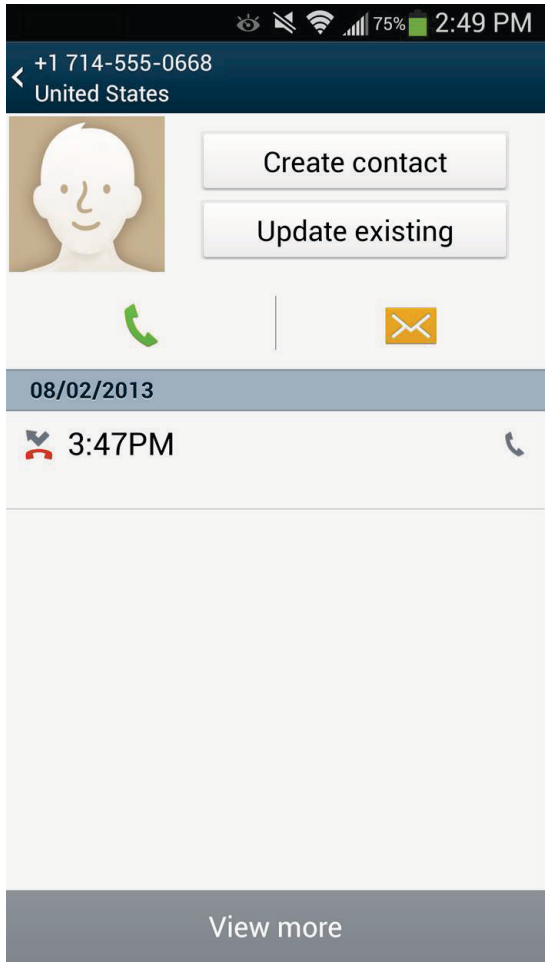
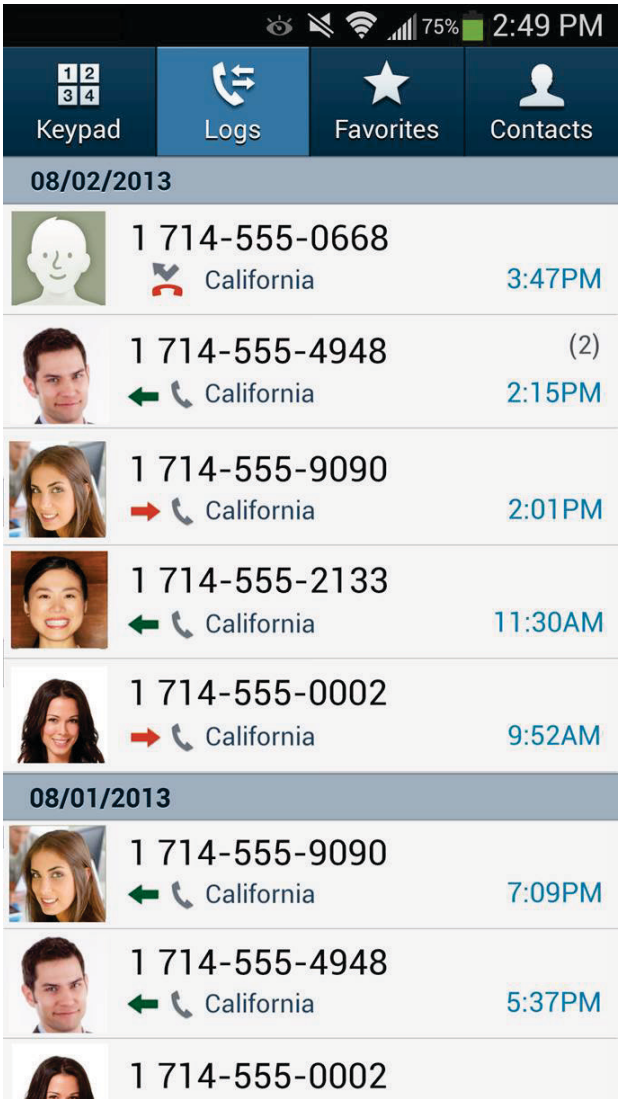
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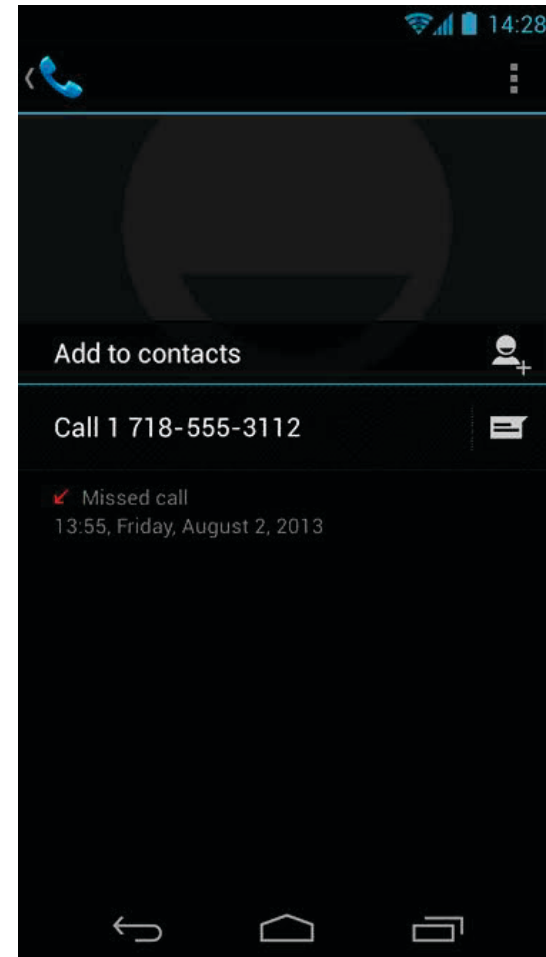
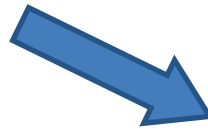
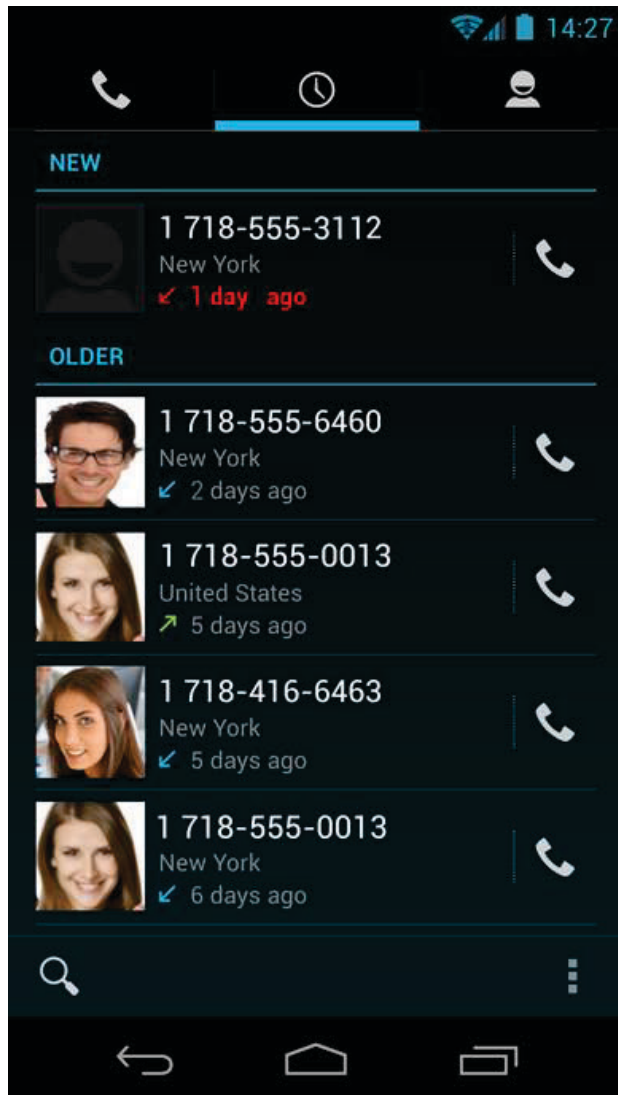
Dated: August 9, 2013

EXHIBIT A

Samsung Galaxy



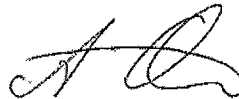
Nexus



DECLARATION

I, Alex Quilici, Chief Operating Officer of YouMail, Inc., hereby declare under penalty of perjury that I have reviewed the foregoing "REPLY COMMENTS OF YOUMAIL, INC.," and, except for (a) matters cited therein contained in the FCC's records, (b) matters for which other support is provided, and (c) matters of which the Commission may take official notice, the facts set forth therein are true and correct to the best of my personal knowledge, information and belief.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'A Quilici', written over a horizontal line.

Alex Quilici

Dated: August 9, 2013.